

BEFORE THE NATIONAL LABOR RELATIONS BOARD
HON. ARTHUR J. AMCHAN
ADMINISTRATIVE LAW JUDGE

Case No. 05-CA-141077

In the Matter of:

LOCAL 689, AMALGAMATED	}
TRANSIT UNION,	}
	}
Respondent,	}
	}
and	}
	}
TAMAR C. SIMMONS,	}
	}
Charging Party.	}

POST-HEARING BRIEF
ON BEHALF OF RESPONDENT, LOCAL 689, ATU

Facts

Local 689, Amalgamated Transit Union, is a local of approximately 12,000 members, which draws most active members from among employees of the Washington Metropolitan Area Transit Authority, the predominant mass transit provider in the national capital region. (Tr. 52, 81) The union headquarters is in Forestville, Maryland, where daily affairs are directed by three elected top officers, the President/Business Agent Jackie Jeter, Treasurer Esker Bilger and Recording Secretary Larry Lockley. (Complaint Para. 4) Daily union work is performed by assistant business agents, appointed from among other elected officials by the President, and a staff of five workers who are neither members nor elected officials of the Union.

These were, until November, 2014: Debra Sanders and Tamar Simmons, Administrative Assistants; Katherine Crawford, Records Manager; David Stephens, Communications Coordinator; and Katy Traber, Assistant to President Jeter. (Tr. 66-67) Two of these, only the Administrative Assistants Sanders and Simmons, were represented by Local 2, Office and Professional Employees International Union ("OPEIU") and covered by a collective bargaining agreement between the two locals. (Tr. 41)

Tamar Simmons was hired by Local 689 in 2010 and evaluated during her first few months of employment by then-office manager Kay Brisbane. (Tr. 83) Ms. Brisbane has since left Local 689 and the position of office manager has not been re-filled. Rather, President Jackie Jeter has undertaken those responsibilities. (Tr. 83) In general, Tamar Simmons worked as receptionist. She also received mail, grievances and other deliveries, logged them in where necessary and then distribute them to the appropriate staff members for attention. (R. Exh. 1, Tr. 44) Debra Sanders, who also served as Shop Steward for Local 2 in the location, kept the union membership records, both electronic and printed, current using software known as the MUMS system. (Tr. 47, 107) While each of the administrative assistants was theoretically responsible to fill-in for the other, Simmons had proven over her employment to have poor proficiency at working with the MUMS system. Ms. Simmons never learned to open a file for data entry into MUMS and when she entered corrections or revisions to existing files, made so many errors that it became a burden for others to correct her work later.¹ Accordingly, Ms. Simmons was relieved

¹Simmons demonstrated on the witness stand a rather profound misunderstanding of Sanders' job, the function of the database or the operation and purpose of MUMS, the basic system which is basic to an Administrative Assistant's job at Local 689. (Tr. 42, 46, 48)

over the years of the task of entering new grievances into the MUMS record and tracking system, and eventually got no more assignments to assist Ms. Sanders with data entry. (Tr. 107-109)

The Union began having trouble processing or attempting to process untimely grievances, and so President Jeter directed Ms. Simmons and Ms. Crawford, who was placing all new grievances into the MUMS tracking system, to check each case for timeliness and to decline untimely grievances unless she, President Jeter, authorized them to be processed. (GC Exh. 10, Jeter Affidavit, pp. 4-5) As the receptionist, many grievances submitted by individual members or transported to the union hall by shop stewards were handed over to Ms. Simmons. On one occasion, a grievance appeared to be untimely, but she was directed to log it in and begin to process it by Second Vice President Gerry Garnett, without checking with President Jeter. As it happened, Ms. Simmons and Mr. Garnett had a romantic relationship. She explained in testimony that they are now engaged to be married. (Tr. 93) President Jeter issued a written warning to Ms. Simmons in late 2013 for accepting the untimely grievance without President Jeter's approval. Ms. Simmons grieved under the Local 2 contract. GC Exh. 10, p. 6) The matter was moved to arbitration, where it was resolved by stipulated award which reduced the written warning to a verbal caution, and included the agreement that "Directives from the President/BA shall not be modified or countermanded by other ATU officials." (GC Exh. 9) Later in 2014, Mr. Garnett was removed from his Assistant Business Agent position working at the Union hall, and announced that he was running for President of the Union, the position held by Ms. Jeter. (Tr. 94)

In June, 2014, the Union hired both Katy Traber and David Stephens. (Tr. 38) President Jeter needed to determine how their duties would fit with others on the existing staff. At the same time, there were complaints from the members about the Union's telephone answering system. It was designed to take callers to the Union main number through a series of numerical choices/selections before ringing through to an individual who could answer the call. This system relieved Ms. Simmons and others of frequent telephone interruptions but was resented by members and other callers who needed to speak with individuals for help with their problems. (Tr. 80-81, 96-97) Accordingly, President Jeter determined to change the system so as to allow any caller who did not know which extension to select, to press "0" in order to connect with a live person. This meant that the reception staff would receive more calls directly. In order to accomplish these changes, Ms. Jeter obtained lists of duties from the staff members, then reallocated them and called a staff meeting to explain the new routines. (R. Exh. 1) With respect to Ms. Simmons, President Jeter determined that she, as the receptionist, would handle the calls of those who selected "0" from the automated answering message. (Tr. 85, 97) Accordingly, President Jeter allocated a number of Simmons' duties to other staff members. (R. Exh. 1) She also announced that, now that duties were clarified among the staff, she would also revive the old practice of regular evaluations of all the staff. (Tr. 84)

Simmons did not protest or object to the re-allocation of duties, (Tr. 57, 58) but got a copy of the revised list of duties and called her Chief Shop Steward Cowan to explain her view that some of her duties were being re-assigned to non-bargaining unit personnel, namely Katherine Crawford. (Tr. 10) Cowan suggested that she file a grievance. Simmons did so and

delivered it to the Union on September 11. The parties met regarding the grievance on September 12, when President Jeter stated that the duties Simmons indicated, particularly those related to grievance processing, had been shared with Crawford for some time. She denied the grievance and provided a written answer later. (GC Exh. 2, 3) When Simmons reported this back to Cowan, he advised that Local 2 would drop the grievance because she, Simmons, had not been harmed by the change. (Tr. 42)

President Jeter was also concerned that Ms. Simmons' break time could be covered so that the telephone calls would be answered promptly. She observed on the 12th, after the grievance meeting, that Ms. Simmons left for break during the morning at 10:25. When Simmons returned, President Jeter asked her when she usually took her break. Simmons replied that she did not need to take a break. President Jeter said she did not want her to forego the break but needed to know when she usually went. Simmons asked when Jeter wanted her to take the break, and Jeter replied that normal time is fine but she needed to know what it was because the other staff had to work around it. Since it was 10:25, said Jeter, was 10:15 to 10:30 OK? Simmons replied 10:30 to 10:45 would be better for her.² (Tr. 102-103) Later, President Jeter called Simmons into her office where they discussed communications issues and she gave Ms. Simmons a written warning for being argumentative. (Tr. 104, GC Exh. 4)

²Simmons remembered this exchange somewhat differently. According to her, when President Jeter asked about break times, she replied "no fixed time" but that it depended on what was happening in the office, then went into Sanders' office to try to get clear about the arrangement for breaks. This, testified Simmons, prompted President Jeter to begin yelling that she had been interrupted and not to leave to talk to Debra, just tell her, Jeter, about the breaks. Jeter said she had already spoken to Debra and the others and just needed a straight answer from Simmons directly, not involving Debra. (Tr. 14)

On the following day, a Saturday, Ms. Jeter was in the Union Hall and noticed that the bulletin board, which was to be maintained by Simmons, had very outdated material posted. She wrote an email to Simmons noting that it was her responsibility to keep the Board current and she needed to do so. The email was denoted as a "written warning" and that her performance must improve. (Tr. 75, GC Exh. 6)

As announced on September 8, President Jeter prepared a form with job performance categories to serve as the framework for each evaluation. (GC Exh. 7) She filled out a form for each employee and scheduled a series of interviews to go over the form with each one privately in turn. (Tr. 88-89) She regarded the evaluations to be private and non-disciplinary. (Tr. 89) However, Simmons did not come to President Jeter's office for the evaluation at the appointed time. President Jeter wrote on a sticky note, stuck it on the form and gave the form to Simmons again. The sticky note, dated September 16, said: "I asked you to fill this out and bring it back to me. You refused to do so. I can take that as insubordination and . . . (the remainder was cut off from the exhibit copy)" (GC Exh. 7) It was not until all the other evaluations were over that Simmons came in, and insisted on bringing Shop Steward Sanders. President Jeter protested, saying that the evaluation was not disciplinary and, after a while, Sanders left. Then Simmons and Jeter began going through the form together. After hearing Simmons' objections to at least two of the entries, President Jeter revised the ratings from "1" (unsatisfactory) to "4" (exceeds requirements) and "3" (meets requirements). (Tr. 27, 88-89 After getting through about half of the categories, President Jeter determined to revisit the evaluation after a few more months, (Tr. 28) hopefully allowing Ms. Simmons time to improve in more of the categories.

Procedural Posture and Issues Presented to the Board

On November 5, 2014, for reasons unrelated to the September events, Tamar Simmons was discharged by Local 689. She filed a grievance against the discharge and that grievance is pending in arbitration. (Tr. 33) On November 18, Ms. Simmons also filed an Unfair Labor Practice Charge alleging that the written warnings for being argumentative and failing to keep the bulletin board current and the relatively critical evaluation, all issued by the Union in September, along with the discharge of November, were retaliatory measures prompted by Ms. Simmons' concerted protected activity, namely consulting with her shop steward and filing a grievance. (GC Exh. 1A and 1B) The Unfair Labor Practice was amended in March, 2015 to omit any reference to the discharge. (GC Exh. 1C) There remains no allegation, before the Board or in grievance arbitration, that the discharge was retaliatory for the exercise of Section 7 rights. Rather, the question posed by the General Counsel is whether Tamar Simmons was given written warnings and then critically evaluated by Local 689 President/Business Agent Jackie Jeter in retaliation for filing grievances and seeking representation by her shop steward. For the following reasons, the answers, plainly, are "no," President Jeter was not endeavoring to discourage representation by Local 2, but to improve the work performance behavior of Tamar Simmons. Accordingly, the Complaint should be dismissed.

Argument

While there is ample evidence of conflict between Tamar Simmons and President Jackie Jeter during September, 2014, there is virtually none which demonstrates that President Jeter's reprimands or evaluation of Simmons were motivated by Simmons' concerted activity. Local 689, and President Jeter in particular, had been upset by Ms. Simmons' performance for months if not years. She had proven unable to assist her fellow Administrative Assistant Sanders with membership record maintenance. She had ignored the President's directive to decline a grievance which was submitted untimely or, at least, to bring it to President Jeter before accepting it. In addition, Ms. Simmons' job responsibilities were in flux because, as receptionist, the problem of dealing with high telephone call volume fell to her through a period when the Union changed its telephone call management routine several times. There were other minor problems with her performance as well. (GC Exh. 10, p. 7) These all came to the fore when the Local Union President determined to re-organize staff functions, in part to give Ms. Simmons ample leeway to handle the anticipated telephone call volume, and President Jeter began to pay direct attention to the performance of her various staff members. That effort and Simmons' accurate impression that corrective measures were aimed at her caused conflict and anxiety in their relationship, not the existence of grievances.

It is important to note that, notwithstanding some implications of the Complaint, there is no evidence that Simmons was a competent employee or that others of the staff of equal incompetence were treated differently. In short, there is no concrete evidence of discriminatory treatment of the staff by the Union. Rather, the General Counsel's entire case is premised on

utterances by President Jeter which, allegedly, betray her bias against Simmons because she filed two grievances. However, the record evidence does not bear out this theory.

It is true that Tamar Simmons filed a grievance to protest the Union's decision to shift some of her work responsibilities to Katherine Crawford, who was not a member of Local 2. (GC Exh. 2) However, there is absolutely zero evidence that the grievance per se prompted President Jeter's reprimands. To the contrary, it was in the grievance context, which was extremely familiar to President Jeter, she seemed most at ease and in command. She received the grievance, met on it promptly, resolved it clearly and, apparently, was persuasive enough that Local 2 declined to process it further. (GC Exh. 2-3, Tr. 42) Nothing about that event would reasonably have raised President Jeter's ire against Simmons. She denied objecting to handling the grievance, and her testimony carried the ring of truth. (Tr. 104) President Jeter's real problem was getting through to Tamar Simmons about her performance and cooperation: Simmons' behavior throughout September was passive/aggressive in the extreme. When her duties were changed, Simmons never said a word, but filed a grievance several days later - not even a grievance reflecting her own dissatisfaction but raising the overall interests of Local 2 members in the integrity of its bargaining unit. (Tr. 58, GC Ex. 2) When President Jeter tried to arrange the office routine so as to "cover" Ms. Simmons' telephone work during her break, she couldn't get a straight answer out of Simmons as to when she wanted her break to occur. (Tr. 14, 102-103) When President Jeter observed carefully Simmons' particular task of maintaining the bulletin board, she found that Simmons had done the bare minimum: removing and replacing the monthly calendar of events, leaving outdated flyers and other material for everyone to see, as if to

remind members that historic activities outweighed the current ones. (Tr. 75-77, GC Exh. 6)

When President Jeter set up a direct discussion of job expectations and performance in the form of evaluations, Simmons simply refused, at least temporarily, to show up. (GC Exh. 7, Tr. 88)

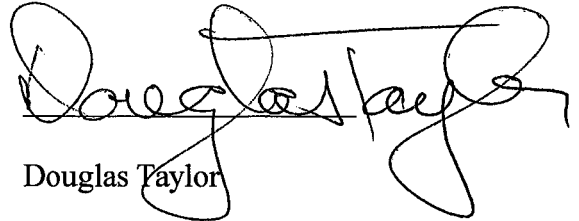
Jeter proved malleable and understanding of Simmons when she did engage, by advocating certain changes in the evaluation form, but gave up trying to finish the task as it was, surely, like pulling teeth just to get Simmons to respond. (Tr. 28, 89)

Conclusion

Of course, it is possible that President Jeter's frustration with Simmons was heightened by the unavoidable sense that Simmons was sympathetic with her boyfriend Gerry Garnett, who had been removed by President Jeter from his full-time assistant business agent position and was dissatisfied enough with President Jeter's leadership to have announced his own intention to run for President. (Tr. 93-94) It is equally possible that President Jeter lost her temper or raised her voice when trying to get Ms. Simmons to respond to the simple question of when she took or wanted to take, her morning break. President Jeter acknowledged telling Simmons, in effect, that she seemed unable to discuss matters with Jeter directly, and made expression of her views only through grievance. (Tr. 104) If Simmons was not happy or comfortable working there, expanded Jeter, she could leave. (Tr. 106) However the Complaint in this case is not premised on President Jeter's frustrations or even intemperate language. Jeter's frustration was with Simmons' coy manner, not with her propensity to grieve. (Tr. 104) Accordingly, the Complaint must be dismissed. The record does not support the conclusion that Tamar Simmons was disciplined or under-evaluated to retaliate against her concerted, protected

activities of filling a grievance or consulting with her Union.

Respectively submitted,

A handwritten signature in black ink, appearing to read "Douglas Taylor", written over a horizontal line.

Douglas Taylor

Gromfine, Taylor & Tyler
1420 King Street, Suite 500
Alexandria, VA 22314

(703) 683-7782
dtaylor@lbgt.com